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Offered: 5/7/77
For Today's Calendar

1 IN THE SENATE

BY THE RULES COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 159
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to state land and to the leasing of
7 state land other than for the extraction of natural
8 resources; and providing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 38.05.085 is repealed and re-enacted to read:

11 Sec. 38.05.085. TERM OF LEASE. (a) The lease shall provide that

12 (1) for the initial 15-year period of the lease, the lessee
13 shall pay the state a fixed base annual rent to be agreed upon by the
14 parties in compliance with the provisions of this chapter;

15 (2) the fixed base annual rent to be paid by the lessee shall
16 be readjusted when the initial 15-year period of the lease has expired
17 and, thereafter, every 10 years; and

18 (3) the readjusted annual rent may not exceed 10 per cent of
19 the value of the property as determined in (b) of this section or 100
20 per cent more than the amount of rent paid each year during the initial
21 period or during the preceding 10-year period, whichever is lower.

22 (b) Each lease shall stipulate that at the conclusion of the
23 initial 15-year period of the lease and at intervals of 10 years there-
24 after the annual rent is subject to adjustment. Rent adjustments re-
25 quired under this subsection shall be based on the fair market value of
26 the property at the time of reappraisal as if it were unimproved land
27 and in which

28 (1) changes in property value due to governmental actions,
29 including zoning reclassifications, shall be included; and

1 (2) changes in property value due to private improvements,
2 except clearing, filling or draining, made to the property since ori-
3 ginally entering into the lease shall be excluded.

4 (c) A reappraisal shall be required at the conclusion of each lease
5 period specified in (b) of this section. The reappraisal shall be com-
6 pleted and the lessee informed of his adjusted rental not less than 60
7 days before the effective date of the rental adjustment. Within the
8 60-day period commencing with the receipt of notice of reappraisal and
9 rental adjustment, a lessee may appeal the reappraisal value or the
10 adjusted rental rate by serving written notice of appeal on the director.
11 Thereafter, the lessee shall appoint an appraiser who shall, within a
12 specified period of time agreed to by the parties, make an appraisal of
13 the property in question. If the appraisal made by the appraiser ap-
14 pointed by the lessee and the appraisal first prepared by the state agree
15 on the fair market value, the determination is absolutely binding upon
16 the parties. In the event the two appraisals are not in agreement and
17 the appraisers cannot agree on an acceptable fair market value, the
18 appraiser first appointed by the state and the appraiser appointed by
19 the lessee shall together appoint a third appraiser who shall then make
20 his appraisal of the property in question. When the third appraisal is
21 completed, the two of the three appraisals which are nearest each other
22 in their determination of the fair market value shall be averaged and
23 the resultant sum shall be the fair market value of the matter in
24 question and absolutely binding on the parties. All costs incurred in
25 making the third appraisal provided in this subsection shall be borne by
26 the state and the lessee equally.

27 (d) If the director determines that private recreational or resi-
28 dential development is the best use of the land, the reappraisal period
29 provided in this section may be lengthened, the initial rate may be ad-

1 justed, or the rent adjustment may be waived in accordance with regula-
2 tions adopted by the commissioner. Before action is taken under this sub-
3 section, the director shall prepare a written finding that the extension,
4 rental rate adjustment, or waiver of rent adjustment is in conformity with
5 this section and is in the best interests of the state. Notwithstanding
6 the provisions of AS 38.05.315(d), if the rental rate is adjusted, the
7 adjusted rent may not exceed four per cent of the fair market value of
8 the property. An extension, rent adjustment, or waiver is valid only if
9 private recreational or residential development actually occurs.

10 (e) The lessee shall make advance payments of the annual rent or
11 portion of it as the director, with the approval of the commissioner,
12 may require.

13 (f) A preference right lessee of grazing or forest land may follow
14 the payment schedule established in his cancelled federal lease or
15 grazing permit if he so desires.

16 (g) Notice of all actions by the department affecting the rights
17 of a lease or lessee shall be given to the lessee.

18 (h) A violation of the provisions of this chapter or a term or
19 provision of a lease subjects the lessee to appropriate legal action,
20 including, but not limited to, a forfeiture of the lease.

21 * Sec. 2. AS 38.05 is amended by adding a new section to read:

22 Sec. 38.05.103. RIGHTS OF HOLDER OF SECURITY INTEREST. (a) If
23 there is a breach or default of a term of a lease or of the provisions
24 of this chapter relating to a lease, the division shall provide written
25 notice of the breach or default by personal service or by registered or
26 certified mail to the lessee and to any holder of record having a
27 security interest in the leased property. The notice shall also make
28 demand upon the lessee to cure or remedy the breach or default within
29 60 days from the date of receipt of the notice and demand. If a lessee

1 fails to cure or remedy the breach or default within 60 days, or within
2 the additional time which the division may allow for good cause, the
3 state may, subject to (b) of this section, exercise any right which it
4 may have at law or as set out in the lease.

5 (b) If a lessee fails to cure or remedy a breach or default within
6 the time allowed in (a) of this section, a holder of a security interest
7 who has received notice under (a) of this section may cure or remedy the
8 breach or default if the breach or default can be cured by the payment
9 of money or, if this cannot be done, by performing or undertaking in
10 writing to perform the terms, covenants, restrictions and conditions of
11 the lease capable of performance by the holder. The holder shall act
12 within 60 days from the date of receipt of notice under (a) of this
13 section or within an additional period as the director may allow for
14 good cause.

15 (c) When the holder of a security interest cures or remedies a
16 breach or default under (b) of this section during the initial 15-year
17 lease period, the director may extend the initial 15-year period by a
18 term sufficient to protect the interests of the holder. An extension
19 granted under this subsection may not exceed 10 years.

20 * Sec. 3. AS 38.05 is amended by adding a new section to read:

21 Sec. 38.05. 108. DEFINITIONS. In secs. 70 - 108 of this chapter

22 (1) "annual rent" means the amount of rent paid annually
23 determined by multiplying the fair market value by the rental rate
24 computed at the time of the initial 15-year period of the lease;

25 (2) "fair market value" or "market value" means the price,
26 estimated in terms of money, which the property would bring if exposed
27 for sale for a reasonable time in the open market, with a seller,
28 willing but not forced to sell, and a buyer, willing but not forced to
29 buy, both being fully informed of all the purposes for which the property

1 is best adapted or could be used;

2 (3) "rental rate" means the rate, expressed as a percentage
3 of fair market value, which a comparable class of privately owned
4 property would bring in the open market with the same conditions of lease
5 as offered by the state;

6 (4) "unimproved land" means land which contains no improve-
7 ments; for purposes of secs. 70 - 108 of this chapter, clearing,
8 filling or draining of land constitute improvements.

9 * Sec. 4. AS 38.05.070(c) is amended to read:

10 (c) A lease may be issued for a period up to 55 years, if it
11 appears to be in the best interests of the state and if the commissioner
12 approves. A lease for a period in excess of 25 years must grant the
13 lessee an option entitling him to extend the term of the lease for up
14 to three consecutive five-year periods in addition to the original term.
15 If the commissioner determines that the land or a part of it which is
16 the subject of a grazing lease is not being used for the purpose issued,
17 the lease may be declared void. [HOWEVER, A NONRENEWABLE LEASE FOR
18 SCHOOL LANDS MAY BE ISSUED FOR A PERIOD NOT TO EXCEED 99 YEARS.]

19 * Sec. 5. AS 38.05.095 is repealed and re-enacted to read:

20 Sec. 38.05.095. SUBLEASES AND ASSIGNMENTS. A lessee may sublease
21 or assign his interests in land or a portion of it upon which he has a
22 lease if the director approves the sublease or assignment. The approval
23 of the director shall be conditioned upon a reappraisal of the property
24 and an adjustment of the annual rent to fair market value. The provi-
25 sions of sec. 85(c) of this chapter apply to reappraisals of property
26 required under this section. No reappraisal of property in conjunction
27 with a sublease or assignment under this section is required if

28 (1) the assignment involves unimproved land and is made for
29 purposes of obtaining financing for improvements on the land; or

1 (2) the assignment is to a holder of a security interest in
2 the property, as provided in sec. 103 of this chapter, and is made during
3 the initial 15-year period of the lease.

4 * Sec. 6. AS 38.05.310 is amended to read:

5 Sec. 38.05.310. NOTICE AND APPRAISAL. (a) No land may be sold
6 or leased, or a renewal lease issued [WITHOUT PUBLIC NOTICE,] except in
7 the case of an oil or gas or mineral lease, unless it has been appraised
8 within 120 [90] days before the date of [FIXED FOR THE] sale or lease.
9 For over-the-counter sale under (b) of this section, an appraisal [WHEN
10 LAND IS OFFERED AT PUBLIC SALE BUT IS NOT SOLD AND IS AVAILABLE AT
11 PRIVATE SALE, NO REAPPRAISAL] is required unless the director finds
12 [CONSIDERS] that a change in value of the lands has not [MAY HAVE]
13 occurred. A grazing lease may be granted to a lessee of federal grazing
14 lands without prior appraisal, if his federal lease was cancelled to
15 allow the state to select the lands under lease. No land may be sold or
16 leased for less than fair [THE APPROVED, APPRAISED] market value, except
17 as provided in secs. 315 and 320 of this chapter and secs. 75 - 85 of
18 this chapter. No land or interest in land may be sold, leased, or other-
19 wise disposed of without public notice.

20 (b) When land is offered at public sale but is not sold, it may be
21 available for sale over the counter. The director shall review the list
22 of parcels of land available on a quarterly basis and shall certify that
23 there has been no change in value since the last reappraisal. If an
24 increase in value occurs in any parcel, the director shall withdraw that
25 parcel from sale over the counter.

26 * Sec. 7. AS 38.05.345(a) is amended to read:

27 (a) Public notice of an auction [A] sale [, LEASE OR OTHER DIS-
28 POSAL] of land or interest in it shall be substantially as follows.

29 * Sec. 8. AS 38.05.345 is amended by adding a new subsection to read:

1 (e) Public notice of a sale, lease or other disposal of land or an
2 interest in it other than by auction, or notice of a classification or
3 other action concerning land, shall conform to the requirements of sec.
4 305 of this chapter and of (b) and (d) of this section, except that an
5 action may be taken more than five weeks following the last appearance
6 of the published notice.

7 * Sec. 9. AS 38.05.105 is repealed.

8 * Sec. 10. CONVERSION OF LEASES. (a) A person holding a valid lease
9 under AS 38.05.070 - 38.05.108, or who is an approved assignee of a lessee
10 under the terms of the lease, may convert his lease in order to obtain the
11 benefits of (b) of this section. The provisions of this section are appli-
12 cable to a lessee, or an assignee of a lessee, if

13 (1) the benefits were not available to the lessee at the time the
14 lease was originally entered into;

15 (2) the lessee, or his assignee, makes all payments due under the
16 lease as provided in this section; and

17 (3) the lessee, or his assignee, is not in violation of any other
18 lease provision.

19 (b) The lease benefits available to a lessee or an approved assignee
20 under (a) of this section include all of the lease provisions authorized for
21 inclusion in leases entered into by the state after the effective date of
22 this Act with the exception of AS 38.05.085(a)(1).

23 (c) When a lessee elects, in writing, to be bound by the provisions of
24 this section, the state shall enter into a new lease with the lessee for a
25 term equal to the remaining period of the original lease which is being ter-
26 minated and which is consistent with the provisions of this Act. However,
27 for purposes of determining the annual rent under the new lease, the fair
28 market value of the property used to establish the annual rent for the first
29 10-year period of the new lease may not exceed the fair market value as it

1 was last appraised on or before January 1, 1975, brought forward to the date
2 of conversion at the rate of 10 per cent per year. If the lease was entered
3 into after January 1, 1975, the fair market value used to establish the
4 annual rent for the first 10-year period of the new lease is the fair market
5 value of the last appraisal brought forward to the date of conversion at the
6 rate of 10 per cent per year.

7 (d) The rental rate which is applied to the fair market value of leased
8 property to compute annual rent of leased property converted under this sec-
9 tion shall be the current rental rate but not more than 10 per cent.

10 (e) No lease conversion under this section shall be effective unless
11 approved by the appropriate board of trustees. If a conversion is not
12 approved by a board of trustees under this subsection, the board may change
13 the annual rent to a mutually acceptable figure.

14 (f) Applications for conversion under this section shall be made not
15 later than July 1, 1980.

16 * Sec. 11. This Act takes effect immediately in accordance with AS 01.10.-
17 070(c).

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